THE HONOURABLE SRI JUSTICE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE K.C.BHANU

WRIT PETITION No.24130 of 2007

Dated: 20.11.2007

Between:

Union of India, reptd., by its
Secretary, Ministry of Defence,
New Delhi and three others.

…Petitioners

And:

D.M.Subrahmanyam

…Respondent

THE HONOURABLE SRI JUSTICE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE K.C.BHANU

WRIT PETITION No.24130 of 2007

ORAL ORDER: **(per the HON'BLE SRI JUSTICE D.S.R.VARMA)**

Heard the learned Assistant Solicitor General of India, appearing for the petitioners, as well as the learned counsel appearing for the respondent.

2. Assailing the order, dated 22.06.2007, passed by the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for brevity "the Tribunal"), allowing the application O.A.No.545 of 2006, filed by the respondent herein, directing the petitioners herein to take into consideration the past continuous service alone rendered by him in the Task Force, prior to the absorption, for the

purpose of taking a decision as to whether he had completed 24 years of continuous service and if it is found that he has completed 24 years of continuous service, he shall be given the benefit of second upgradation, in accordance with rules relating to the Assured Career Progression Scheme, the present writ petition has been filed.

3. It appears, the case of the respondent herein, before the Tribunal, was that originally he was appointed as skilled personnel i.e., Mechanist, on contract basis, in the year 1975, and, subsequently, when he was found to be suitable, he was adjusted in Naval Dockyard in the year 1977.

4. While so, due to lack of promotional avenues, certain benefits, by way of formulating schemes, have been evolved by the petitioners. One such scheme is called “Assured Career Progression Scheme” (for brevity “the ACP Scheme”). The said ACP Scheme contemplates that all the incumbents with qualified services, are entitled to two financial upgradations under the ACP Scheme i.e., first upgradation after they complete 12 years and the second upgradation after they complete 24 years of service. But, the respondent herein, who performed his duties from 1975, and was later absorbed in Naval Dockyard, was given only one upgradation under the ACP scheme after he completed 12 years of service.

5. Since it was the contention of the petitioners herein that the respondent herein was not entitled to the second upgradation under the ACP scheme, he, along with one G.Bhaskarlal, filed the application O.A.No.445 of 2006, before the Tribunal, seeking regularization of his past service, which was rendered by him on contractual basis, as the regular basis for the purpose of application of the ACP scheme, and the same was allowed by order, dated 13.06.2007, and the said order has become final since

the same was not challenged by the petitioners herein.

6. Furthermore, pursuant to the said order, dated 13.06.2007, in O.A.No.445 of 2006, passed by the Tribunal, directing the petitioners herein to consider the services of the respondent herein from 1975 to 1983 as the regular service, the petitioners herein have passed an order, dated 23.10.2007, amending the qualifying service insofar as only two incumbents; one is with regard to the respondent herein and another is with regard to said G.Bhaskarlal.

7. Insofar as the respondent herein, in the said order, dated 23.10.2007, passed by the petitioners herein, the order, dated 13.06.2007, passed by the Tribunal, in O.A.No.445 of 2006, directing the petitioners herein to regularize the services of the respondent herein from 1975 till 1983, was specifically referred to and a consequential order was passed stating that "the individual had rendered qualifying service as on 30th April 2007 for the period from 23.08.1975 to 30.04.2007.

8. From the above, it is obvious that the order, dated 13.06.2007, passed by the Tribunal, in O.A.No.445 of 2006, had been fully complied with, as a result, the respondent herein has to be treated as in regular service with effect from 23.08.1975, in which event, he had completed 24 years of qualifying service for the application of the ACP scheme twice, but not once.

9. But, as was already noticed, the benefit of the ACP scheme was given to the respondent herein only once on the ground that he did not complete 24 years of service. In other words, only 12 years of qualifying service of the respondent herein from 1983 had been taken into consideration. Now, by virtue of the earlier order, dated 13.06.2007, passed by the Tribunal, in O.A.No.445 of 2006, there cannot be any doubt, whatsoever, as

regards the regular and continuous service of the respondent herein from 1975 and, obviously, he had completed 24 years of service as on date.

10. It is not clear as to whether the present amendment to the qualifying services, insofar as two incumbents; one G.Bhaskarlal, the petitioner No.2 in the said O.A., before the Tribunal, and the respondent herein, was brought to the notice of the Tribunal or not.

11. However, the learned counsel appearing for the respondent herein submits that the order, dated 23.10.2007, passed by the petitioners herein, had been brought to the notice of the Tribunal in a contempt proceedings, initiated by the respondent, wherein the same was made part of the record. Therefore, it is obvious that the said proceedings are not only in the notice of the Tribunal but also in the knowledge of the petitioners herein.

12. Therefore, having regard to the facts and circumstances of the case, particularly in the light of the amendment to the qualifying service as regards the respondent herein, and in the light of the order, dated 13.06.2007, passed by the Tribunal in the earlier application i.e., O.A.No.445 of 2006, and also the impugned order, dated 22.06.2007, we do not find any merit in the writ petition and the same is liable to be dismissed.

13. In the result, the writ petition is dismissed, at the stage of admission. However, there shall be no order as to costs.

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JUSTICE D.S.R.VARMA

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JUSTICE K.C.BHANU

20TH NOVEMBER 2007

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